

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR SUSSEX COUNTY

QUAYSHETTA HOPKINS, : C.A. No. S09M-04-003 ABH
Petitioner, :
v. :
STATE OF DELAWARE, :
Respondent. :

COMMISSIONER’S ORDER

Petitioner Quayshetta Hopkins (“petitioner”) has filed a petition pursuant to 16 *Del. C.* § 4784(j)¹ and Superior Court Civil Rule 71.3(c) (“Rule 71.3”)² seeking the return of United States

¹In 16 *Del. C.* § 4784(j), it is provided as follows:

Property seized pursuant to this section that is not summarily forfeited pursuant to subsection (f) of this section shall be automatically forfeited to the State upon application to the Superior Court if, within 45 days of notification of seizure to all known parties having possessory interest in the seized property by registered or certified mail to the last known post-office address of the parties in interest and by publication in a newspaper of general circulation in this State, the person or persons claiming title to the seized property do not institute proceedings in the Superior Court to establish:

- (1) That they have the lawful possessory interest in the seized property; and
- (2) The property was unlawfully seized or not subject to forfeiture pursuant to this section.

²In Superior Court Civil Rule 71.3(c), it is provided in pertinent part as follows:

Petition for the return of property. An owner or interest holder may seek the return of property seized by the State pursuant to 16 *Del. C.*, § 4784 by filing, costs prepaid, a civil petition, with the Superior Court sitting in the County in

currency which the State of Delaware (“the State”) seized on April 2, 2009, from a safe in a vehicle petitioner was driving.

Petitioner’s petition states that she was seeking the return of \$3,998.00 in United States currency. At the hearing held in this matter, petitioner explained that she was seeking the return of \$3,400.00, as only that amount belonged to her. Testimony established that an additional \$498.00 was seized from Myron L. Hunt’s (“Hunt”) person when he was arrested on drug charges on April 2, 2009.³ Since petitioner clarified she only is seeking to retrieve the \$3,400.00 in currency seized from the safe, this decision addresses only that sum. Because no action seeking the return of the \$498.00 seized from Hunt’s person has been pursued, that amount is deemed forfeited to the State.

The petition was referred to the Commissioner. A hearing on the petition took place on November 12, 2009. This constitutes my decision and order in the matter which is rendered pursuant to Administrative Directive of the President Judge of the Superior Court, No. 2007-5.

SUMMARY OF THE EVIDENCE⁴

The State called Officer Jared Haddock to testify. A summary of his testimony appears

which the property was seized no later than 45 days after the date of the notice required by 16 Del. C., § 4784(j) measured from the date of mailing or the date of publication whichever shall be later.

³The petition incorrectly sought \$100.00 more than what was actually seized.

⁴Some of the facts contained in this order are obtained from the criminal proceedings in the case of *State of Delaware v. Myron L. Hunt*, Def. ID# 0904000946. The Court may take judicial notice of the facts contained in these criminal proceedings. *Delaware Uniform Rules of Evidence, Rule 201*.

below.

He has worked for the Laurel Police Department for three years.

He was on duty April 1, 2009 through April 2, 2009. A confidential informant set up a controlled delivery/purchase of drugs from Hunt at the Oasis Truck Stop, Laurel, Delaware. Hunt arrived there in a Chrysler Concord which petitioner was driving. Hunt exited the vehicle from the passenger side.

After the drug transaction occurred in the Oasis Truck Stop, the confidential informant affirmed with the officer that he purchased marijuana from Hunt with \$140.00. After Hunt returned to the Concord, Officer Haddock confronted him and told him to get out of the vehicle. A search of Hunt produced, from one pocket, the \$140.00 used to buy the marijuana and, from another pocket, an additional \$358.00. During a search of the vehicle petitioner was driving, the officer located a Honeywell safe in the back floor. The key to the safe was on the keyring to the vehicle. The officer opened the safe and located \$3,400.00 in United States currency as well as an uncashed social security check. When Officer Haddock asked petitioner how much money was in the safe, she told him she did not know, but it was her money and not Hunt's.

Hunt told the officer he was dealing drugs to support his kids. Petitioner is the mother of two of these children.

The officer also testified that he had a drug-sniffing dog sniff the \$3,400.00, and the dog "hit" on the money, thereby indicating the currency had drugs on it.

Hunt was arrested on charges of delivery of a non-narcotic Schedule I controlled substance (marijuana), possession with intent to deliver a non-narcotic Schedule I controlled substance, possession of drug paraphernalia, and possession of marijuana. Hunt entered a no

contest plea to the delivery of marijuana charge.

The officer learned that petitioner also owned a Suburban which Hunt normally drove. Petitioner gave him permission to search that vehicle. The police located 1.9 grams of marijuana in the glove box of the Suburban.

The police officer also testified about Hunt's criminal history. Hunt previously was arrested for dealing drugs on October 4, 2008, and November 26, 2008. He was arrested for possession of marijuana and possession of drug paraphernalia on December 30, 2008. Hunt entered into a plea bargain which entailed all three cases. When Hunt was arrested on October 4, 2008, he had petitioner's kids in the car with him. Petitioner's vehicle, which she had paid for, was seized and forfeited as a result of that October 4, 2008, arrest.

Petitioner testified. Although during the scheduling conference in this matter, the Court specifically instructed her to bring all documentation necessary to support her case, she did not do so. The State, in the spirit of fairness, provided the Court with the documentation it had received from petitioner during discovery.

Petitioner testified to the following.

She knew about Hunt's arrests and that he was a drug dealer. She and he had an eight year relationship before she had him arrested on October 6, 2009, for abusing her. She knew he was a bad person.

She was driving Hunt the night the money was seized because Hunt wanted to go to the store. She did not know he was planning to sell drugs that evening.

The night the money was seized, she had given Hunt access to the safe because he was supposed to sell some rims. She had told Hunt he could put the proceeds of the sale in the safe

with her money. Petitioner offered this information as a partial explanation of why she told the officer she did not know how much of the seized currency was hers. She explained that she did not know if Hunt had put the proceeds of the sale of the rims into the safe; consequently, she did not know what sums of monies were in the safe and what amounts belonged to whom. Also, she was upset and frustrated and did not want to answer the officer's questions. She said her response to his question about whether she knew how much of the money was hers was, "No, I don't; leave me alone."

Petitioner did not have a bank account at the time this money was seized. Instead, she kept her money and other valuable items in the safe. The source of the money in the safe was her 2008 tax refund. She testified, and the discovery documents show, that she received a tax refund from the Federal government in the amount of \$6,533.00. The discovery documents also show that in late January, 2009, she received a loan in the amount of \$6,533.00, which was repaid with her income tax refund. In other words, in late January, 2009, she borrowed against her tax refund and the lender took her tax refund to pay off that loan.

Testimony from petitioner showed her income in 2008 to be minimal, around \$15,000.⁵ Pay stubs from January, 2009 through the end of March, 2009, show that she was netting, on average, close to \$1,100.00 per month. She has three children. One of the children is disabled and she received around \$674.00 per month from Social Security for this child. Petitioner also receives food stamps for her children. Although it was not clear, petitioner made a statement that indicated Hunt did not give her money for child support. Petitioner was not clear about her

⁵Documents show income from Genesis Properties of Delaware, LP to have totaled \$11,826.72 and from Ridge Philips of Delaware to have totaled \$3,500.75 for 2008.

expenses during the time the monies were seized. She maintained that she was living with her grandparents so she did not have as many expenses as she has when she is not living with them. She was, however, making monthly car payments on the Suburban (\$240.00) and paying bills for car insurance on two cars (\$224.00), cable and phone (\$85.00), and a minimal amount of food (\$40.00). Petitioner did not establish how she paid for, or was paying for, the Chrysler Concord which she bought after the other vehicle was seized in October, 2008. In any case, she did not testify the new car was free, so it must be presumed she had some expense for that car. Furthermore, petitioner did not establish what monies she might have been paying for gas for two cars, clothing, and other incidental expenses.

FINDINGS OF FACT AND DISCUSSION

Delaware's drug forfeiture statute was enacted to "cripple the trafficking and sale of illegal drugs." *In the Matter of One 1987 Toyota*, 621 A.2d 796, 798 (Del. Super. 1992).

"[T]he State has an initial burden of proving probable cause [for the institution of a forfeiture]...." *Brown v. State*, 721 A.2d 1263, 1265 (Del. 1998). Probable cause is "'a reasonable ground for belief of guilt, supported by less than prima facie proof but more than mere suspicion.'" *Matter of One 1987 Toyota*, 621 A.2d at 799 (quoting from *United States v. Premises Known as 3639-2nd St., N.E., Minneapolis, Minnesota*, 869 F.2d 1093, 1095 (8th Cir. 1989)).

In the case of *Brown v. State*, 721 A.2d at 1265, the Supreme Court, quoting from 16 *Del. C. § 4784(a)(7)a.*, states:

With regard to money, the Forfeiture Act states that "all moneys ... found in close proximity to forfeitable controlled substances ... are presumed to be forfeitable"

What constitutes "close proximity" was examined in the case of *In the Matter of: \$1,165.00 U.S. Currency*, Del. Super., C.A. No. 95M-05-009-RSG, Reynolds, Commissioner (March 6, 1997) at 11-14, and I quote therefrom:

"Close proximity" is a relative term. However, there are many cases construing identical or similar language in various forfeiture statutes in a number of states and localities. Analysis of those cases indicates that close proximity is not usually determined in the abstract. Rather, the courts tend to consider the totality of circumstances in determining whether seized money is in close enough proximity to illegal drugs or paraphernalia to raise an inference that the money was used in, or derived from, drug dealing. However, some courts have held that "money found on or near a person who is committing, attempting to commit or conspires to commit any of the specifically enumerated [drug] offenses is presumed forfeitable – period."

The "close proximity" provision applying to money in the Act does not appear to have been previously construed by this Court. However, in construing other provisions of the statute, this Court has utilized a probable cause approach. In applying the test, this Court took into account the totality of the circumstances, Therefore, in determining whether the \$1,165.00 USC in this case was sufficiently in "close proximity" to the marijuana in the vehicle trunk to raise a presumption that the money is forfeitable, it is necessary to look to the totality of the circumstances. [Citations and footnotes omitted.]

In this case, the State has met its burden by establishing that the money was physically close to drugs and that the totality of the circumstances raises the presumption the money was forfeitable. The evidence established that the seized money was in the backseat of the vehicle in which Hunt was riding. Hunt was a drug dealer. Hunt dealt drugs on the evening in question. Hunt had drugs on him before he sold them. Hunt had access to the safe that night. Thus, the State established probable cause to believe the currency was furnished or intended to be furnished in exchange for a controlled substance.

Once the State meets its burden, then petitioner must rebut the State's case.16 *Del. C. § 4784(a)(7)a.*; *Brown v. State*, 721 A.2d at 1265. The petitioner must show by a preponderance of the evidence:

- (1) That they have the lawful possessory interest in the seized property;
- and
- (2) The property was unlawfully seized or not subject to forfeiture pursuant to ... [the forfeiture statute].

16 *Del. C.* § 4784(j).

In this case, petitioner argues that the currency was hers, not Hunt's, and it was not subject to forfeiture because it was not related to illicit drug activity. Petitioner explains that the money came from her tax refund.

I do not accept petitioner's statements to that effect for several reasons. At the time she filed the petition, she was still with Hunt. The fact that she remained with him even after he was arrested for dealing drugs while in the presence of his kids, after a previous vehicle she owned was seized due to his drug dealing, and after he was arrested on drug charges three times in a short span of time shows that she supported him, whether she considered him "bad" or not. When she filed the petition, the amount she sought included the monies found on Hunt's person. Thus, the circumstances lead me to conclude that petitioner was willing, at the time she filed the petition, to say the money was hers in order to retrieve it on Hunt's behalf.

Furthermore, the circumstances give rise to the conclusion that petitioner would not have that large amount of money available to her. Petitioner was so desperate for money in January, 2009, that she obtained a loan and secured it with her tax refund. The fact she clearly could not wait for the tax refund to come to her in the usual course of events indicates a financial crisis which casts doubt on whether she actually had any of the proceeds of that loan left by April 2, 2009. Petitioner did not make a great deal of money. She had three children to support. Although she received government assistance, she had to support herself and three children while at poverty level.

In order to have established that the cash in the vehicle with her drug-dealing boyfriend was hers and not the proceeds of his drug deals, petitioner needed to provide documentation and detailed information to support her contention that the money was hers. In particular, she needed to present documentation to support her expenses. She failed to do so. Thus, she did not meet her burden.

In light of the foregoing conclusions, the currency must be forfeited and petitioner's request for the return of her property must be denied.

CONCLUSION

Based on the foregoing, I conclude as follows:

- 1) The State established probable cause to have initiated the forfeiture proceedings;
- 2) Petitioner has not met her burden of proving the seized currency was not forfeitable;
- 3) Petitioner is not entitled to the return of the currency and the currency must be forfeited to the State;
- 4) If either party wishes to file an appeal from this decision pursuant to Superior Court Civil Rule 132, then it must do so on or before **December 2, 2009**;
- 5) Absent an appeal, the decision in this matter shall become final on December 3, 2009, and the Court will enter an order without further notice which shall:
 - i) Deny petitioner her petition for return of the \$3,400.00 in United States currency;
 - ii) Order the \$3,400.00 in United States currency which petitioner sought and the additional \$498.00 seized from Hunt be forfeited to the State; and

iii) Order that the \$3,898.00 in forfeited monies be deposited in the Special Law Enforcement Assistance Fund.

IT IS SO ORDERED THIS 16th DAY OF NOVEMBER, 2009.

Commissioner

cc: Prothonotary's Office
Quayshetta Hopkins
Robert J. O'Neill, Jr., Esquire